

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR-2352-2014

Date of Decision: 17.05.2019

Hussan Lal

.....Petitioner

Versus

Jasbir Singh

.....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Arun Takhi, Advocate, for the petitioner.

Mr. Dinesh Nagar, Advocate, for the respondent.

Harnaresh Singh Gill, J.

The petitioner was tried for committing the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act'). Vide judgment and order dated 23.11.2012, learned Judicial Magistrate, Ist Class, SBS Nagar, held the petitioner guilty under Section 138 of the Act and sentenced him to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5,000/- and, in default of payment of fine, to further undergo simple imprisonment for a period of 15 days.

Aggrieved there-against, the petitioner filed an appeal before the learned Sessions Judge, SBS Nagar. Vide judgment dated 23.05.2014, the learned Additional Sessions Judge, SBS Nagar, dismissed the appeal filed by the petitioner, thereby affirming the judgment and order passed by the learned trial

Magistrate. Still aggrieved, the petitioner has preferred the present revision petition.

Respondent-complainant had filed a complaint under Section 138 of the Act, against the dishonor of a cheque issued by the appellant in respect of the personal loan of Rs.2,80,000/- advanced to the accused-petitioner on 10.7.2008. The cheque got dishonoured on account of its payment being stopped by the drawer. The respondent-complainant served notice upon the accused on 26.4.2009. The accused-respondent, in reply to such notice asserted that he had issued a blank cheque, which was later on allegedly filled in by the complainant; that the entire loan amount stood repaid by the accused-respondent and that the cheque in question had nothing to do with the said transaction of Rs.2,80,000/-.

As noticed above, after taking into consideration the evidence on record and the rival contentions of the parties, the learned trial Magistrate, convicted the accused-petitioner under Section 138 of the Act and sentenced him accordingly. The appeal filed by the accused remained unsuccessful.

Both the Courts did not find any substance in the plea raised by the petitioner that the cheque in question was issued as a security cheque and that the complainant-respondent had misused the same by presenting it before the Bank and thereafter launching the criminal prosecution against the petitioner. It was found that had there been any substance in the plea raised by the petitioner that he had cleared the entire loan taken by him from the complainant, he would have lodged a

complaint with the authorities concerned regarding non return of the alleged security cheque by the complainant. It was further found that though the accused-petitioner had alleged that he had taken loan from JKB Finance Company, being run by the complainant, yet he did not produce any evidence, including summoning of the records or the relevant documents of the said Finance Company. Thus, it was found that the bald averments made by the accused-petitioner remained unsubstantiated. It was further found that the accused-petitioner was given sufficient opportunity to lead evidence in his defence, but he had only examined DW1-Surinder Lal, member Panchayat. The said witness never turned up for cross-examination. Yet further PW2-Gurmeet Ram, Chowkidar, who though stated that he had served notice pertaining to the meeting of the village Panchayat on the complainant, yet he failed to bring on record any such notice. Thus, there was no evidence on record to prove that the relations between the parties, which were stated to be cordial earlier, became strained at a later point of time. It was further found that though the accused-petitioner had alleged that the cheque in question was filled in three different handwritings and the accused-petitioner had also disputed his signatures on the cheque, yet no handwriting expert had been examined by the accused-petitioner. It was, thus, held that the complainant had proved the case against the accused-petitioner beyond the shadow of reasonable doubt.

In appeal, while affirming the findings recorded by the learned trial Court, it was found that the relations between the parties were cordial before 27.5.2009. Undeniably, the transaction of the cheque took place before 27.05.2009. The complaint was filed before the said date and thus, it was found that the transaction of the cheque took place when the parties were maintaining cordial relations. Still further, from the evidence on record, it was found that from the Bank Statement of the complainant, which was duly proved on record, it was proved that he had withdrawn from the bank an amount of Rs.2,25,000/- on 10.07.2008 and being an agriculturist, he had arranged an amount of Rs.55,000/- in cash. Thus, it was held that the complainant was possessed of sufficient funds as on the date of advancing an amount of Rs.2,80,000/- to the accused-petitioner. Still further, it was found that the accused-petitioner had taken contradictory stands in reply to the legal notice issued by the complainant and before the Court in his defence.

Learned counsel appearing for the petitioner vehemently contends that the entire loan amount stood repaid by the accused-petitioner and the cheque in question was given only for the security purposes. It is further submitted that it is beyond common understanding that out of Rs.2,80,000/- allegedly advanced as loan to the accused-petitioner, the respondent-complainant would pay an amount of Rs.55,000/- in cash. Thus, the entire case set up by the complainant, being highly doubtful and suffering from huge contradictions, the

impugned judgments and order passed by the Courts below are not tenable in the eyes of law.

On the other hand, learned counsel appearing for the respondent, while refuting the arguments raised by the counsel for the petitioner, states that guilt of the accused stood proved by way of cogent and convincing evidence led by the complainant. It is further submitted that once the factum of negotiable instrument having been given by the accused to the complainant stood proved on record, the same would carry a statutory presumption that it was given for consideration. Apart from that, the accused-petitioner had, though disputed his signatures on the cheque in question, yet he did not examine any handwriting expert in support of such assertion. Besides, the learned Courts below have rightly found that there are material contradictions in the versions of the accused-petitioner in his reply to the legal notice and the one taken before the Courts below.

I have heard learned counsel for the parties, but do not find any merit in the present revision petition.

It may be noticed that this Court in its revisional jurisdiction is not to re-appreciate the evidence. The only aspect that requires to be examined as to whether there is any patent illegality or irregularity in the findings recorded by the Courts below. However, after hearing the learned counsel for the parties and having gone through the records of the case, I do not find that any interference is called for in the present revision petition.

The factum of issuance of cheque by the accused-petitioner to the complainant stands duly proved. The accused-petitioner, however, took the stand that the same was towards the security of the loan amount, which stood duly repaid. No evidence, however, was led to prove the said fact. At the same time, the accused-petitioner also disputed his signatures on the cheque in question and had also alleged that the same was filled with three different handwritings. However, no evidence, including the examination of the handwriting expert, was ever led. As noticed above, both the Courts below did not find any substance in the defence set up by the accused-petitioner. Rather, it was found that the complainant had taken contradictory stands. Detailed plausible reasons given on the basis of evidence led, cannot be found fault with. It could not be pointed out that any evidence has been misread or misinterpreted by the Courts below.

In view of the above, I do not find any merit in the present revision petition. The same is hereby dismissed. The accused-petitioner, who is stated to have already undergone 5 months of the total sentence and is on bail now, shall surrender before the Chief Judicial Magistrate concerned to undergo his remaining sentence.

(HARNARESH SINGH GILL)
JUDGE

17.5.2019
ds

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No